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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,211	08/18/2003	Mevin S. Mogil	100570-00036	2229

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ARENT FOX KINTNER PLOTKIN & KAHN, PLLC
SUITE 400
1050 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20036-5339

EXAMINER

EARLY, MICHAEL JACOBY

ART UNIT	PAPER NUMBER
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3744

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/642,211

Applicant(s)

MOGIL, MEVIN S.

Examiner

Michael J. Early

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

As aforementioned, the lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

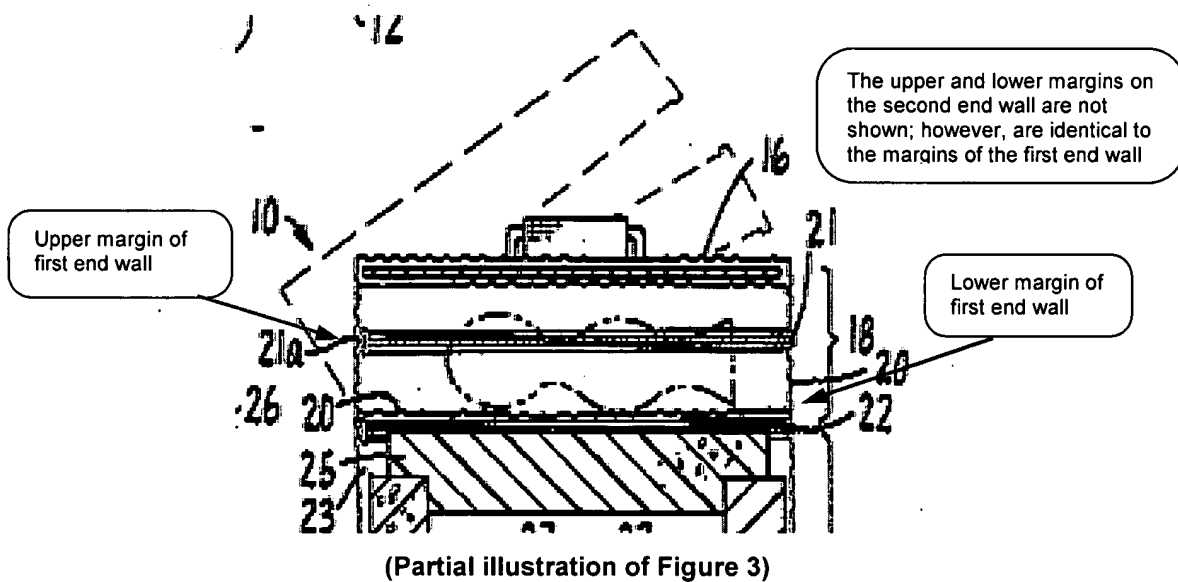
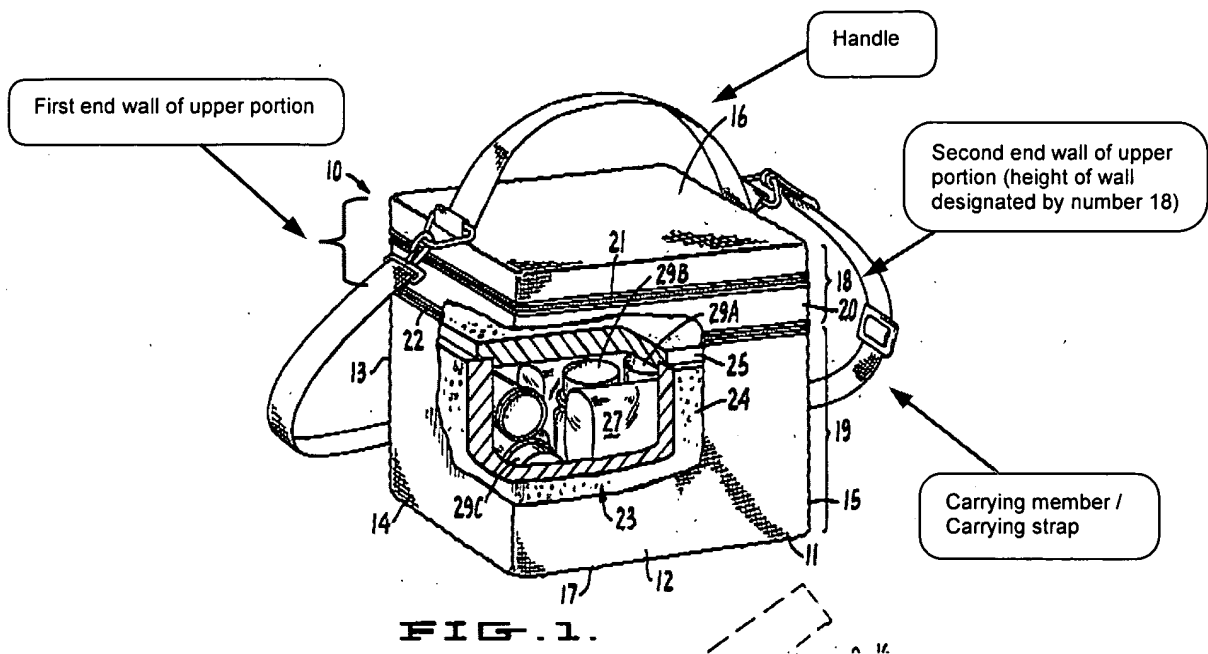
1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 36-39, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hauk (US 4,796,758) in view of Jacober (US 5,090,526).

Regarding claim 36, Hauk discloses an insulated lower portion (19 – lower compartment; col. 3, lines 35-46) and an upper portion (18 – upper compartment) (see col. 5, lines 33-36; Figures 2, 8); said lower portion having a rectangular base (17 – bottom panel) and rectangular side walls (12, 13, 14, 15 – front, back, side panels) standing upwardly therefrom (as seen in Figures 1, 3); said rectangular base having a

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length and a width, said length being greater than said width (as seen in Figures 1, 2); said container assembly having a first closure member (22 – heavy duty zipper) operable to control access to said lower portion thereof (see col. 3, lines 35-41); said upper portion having a first end wall, a second end wall (as seen in the illustration of Figure 1), and a wall (16 – top panel) extending therebetween (as seen in Figure 1); said first end wall having a lower margin and an upper margin (as seen in the partial illustration of Figure 3 below), said lower margin having a length corresponding to said width of said base of said lower portion (as seen in Figure 1); said upper margin of said first end wall having a downwardly project profile (as seen in Figures 1, 2); said second end wall having a lower margin and an upper margin (as seen in the partial illustration of Figure 3 below), said lower margin of said second end wall having a length corresponding to said width of said base of said lower portion (as seen in Figure 1); said upper margin of said second end wall having a downwardly projecting profile (as seen in Figures 1, 2); said first and second end walls of said upper portion being spaced apart a distance corresponding to said length of said base of said lower portion of said container assembly (as seen in Figure 1); said wall conforming to said profiles of said first and second end walls (as seen in Figures 1, 2); said wall having front and rear margins (as seen in Figures 1, 2); said container assembly having an externally accessible closure member (21 – heavy duty zipper) controlling access to said upper portion (see col. 3, lines 25-28); said upper portion having a first chamber defined therein (as seen in Figures 1, 3); said lower portion having a second chamber (23 – interior cavity or chamber) defined therein (as seen in Figures 1, 3); said first chamber being fully segregated from said second chamber (as seen in Figures 1, 3); said upper portion being movable relative to said lower portion when said first closure member is in said open condition (see col. 3, lines 28-34; Figure 3); and said upper portion being releasably securable in a fixed position relative to said lower portion (see col. 3, lines 25-42; Figures 1, 3).



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Hauk does not expressly disclose:

- the container is soft-sided;
- details related to an insulated upper portion;
- details related to a spanning wall and the profile of the upper margins along the container's first and second walls;
- details related to a rectangular panel.

Jacober ('526) teaches that it is well known for soft-walled containers to be used to carry an assortment of items (see col. 1, lines 18-25). Jacober ('526) further discloses a soft-walled carrier (10) whose interior (26 – body cavity) is divided into upper and lower portions, via a rectangular panel (40 – shelf member). Further disclosed is that upon unzipping the container's closure member (33 – zipper), users can gain access to the interior of the container wherein the shelf member can be detached (via snap fasteners [52]) and folded so to allow the container to be compressed for storage purposes or for the insertion of larger items (as seen in Figures 4, 5). In addition, the shelf member is seen to conform to the outline defined by the carrier's side and top panels (14, 16, 18). The carrier is further comprised of intermediate foam layers (38), which are placed within the panels (12, 14, 16, 18, 20) of the container (see col. 5, lines 1-16; Figures 3, 4). The carrier's top panel (18), which has a downwardly concave profile and margins along its sides, spans across the top of the apparatus (as seen in Figures 1, 2). Further disclosed is that the carrier may be carried via handle straps (60) and/or shoulder straps (62) (see col. 5, lines 40-44; Figures 1, 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Hauk by incorporating soft-sided walls along the exterior of the apparatus, as taught by Jacober ('526), so to reduce the apparatus' overall weight and cost of manufacturing (see col. 1, lines 19-25), thus

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making the apparatus more user-friendly and increasing the overall profit from sales, respectively.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Hauk by insulating the upper portion of the apparatus, as taught by Jacober ('526), to more thoroughly insulate the contents enclosed within, thus increasing apparatus' efficiency and making it more user-compatible.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Hauk by incorporating a spanning wall and downwardly concave profile along the apparatus' top panel, as taught by Jacober ('526), for aesthetic reasons, thus making the apparatus more appealing and marketable to consumers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Hauk by incorporating a rectangular panel that is movable within the apparatus, as taught by Jacober ('526), so that larger food items or a larger quantity of food items can be enclosed within, thus making the apparatus more user-compatible and -friendly.

Regarding claim 37, Hauk discloses a handle by which to carry said container (as seen in the illustration of Figure 1 above), said handle being mounted to said wall (as seen in Figure 1).

Regarding claim 38, Hauk discloses said container has a center of gravity (obvious), and a carrying member (as seen in the illustration of Figure 1 above) is mounted to said container above said center of gravity (obvious).

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Regarding claim 39, Hauk discloses a carrying strap is mounted to said upper portion of said container (as seen in the illustration of Figure 1 above).

Regarding claim 41, Hauk discloses said upper portion of said container is hinged relative to said lower portion of said container (see col. 3, lines 25-42; Figures 1, 3).

Regarding claim 42, Hauk discloses said upper portion is movable relative to said lower portion when said first closure member is moved to an open position to provide access to said second chamber (as seen in Figures 1, 3).

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hauk as modified by Jacober ('526) and in further view of Young (US 6,015,072).

Hauk as modified by Jacober ('526) do not disclose details related to a liner.

Young teaches that it is well known for compact luggage pieces and small containers to be used to carry a variety of items (see col. 1, lines 18-41). Young further discloses of a combination collapsible backpack and lined carrying compartment (see Abstract). In addition, it is disclosed that the carrying compartment is comprised of a removable liner (88) (see Abstract; col. 4, lines 63-67; col. 5, lines 1-39; Figure 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Hauk as modified by Jacober ('526) by incorporating a liner within the apparatus, as taught by Young, to contain spills and for cleansing purposes (see col. 1, lines 29-41; col. 4, lines 64-67), thus making the apparatus more user-compatible and -friendly.

Claims 43-46 and 48-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacober (U.S. 5,865,314) in view of Jacober ('526).

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Regarding claim 43, Jacober ('314) discloses a container comprising an upper portion (72 – room temperature compartment) and a lower portion (46 – cool compartment) hingedly connected thereto (depending on your point of reference, the cool compartment can be seen as the upper portion and the room temperature compartment can be seen as the lower portion; Figures 1-4); said upper portion having a rectangular bottom wall (48 – divider panel) having a pair of short sides and a pair of long sides (as seen in Figure 3); a top wall (24 – bottom panel) having a front margin, and a rear margin (as seen in Figures 1, 3); a pair of first and second opposed end walls connected to said top wall (as seen in Figures 1, 3); said top wall extending between said first and second opposed end walls and defining a widening profile (as seen in Figures 1, 3); each of said end walls having an upper edge conforming to said widening profile of said top wall portion (as seen in Figures 1, 3); each of said end walls standing upwardly of one of said short sides of said bottom wall (as seen in Figures 1, 3); said front margin and said rear margin being located upwardly of respective first and second ones of said long sides of said bottom wall (as seen in Figures 1, 3); said rectangular bottom wall being permanently connected to said rear margin (as seen in Figures 1, 3, 4); said upper portion having a first chamber (72 – room temperature compartment) defined therein; said upper portion having an externally accessible first closure member (44 – double pull zipper), said first closure member being operable to control access to said first chamber (as seen in Figures 1, 3); said lower portion having insulated wall members (see col. 4, lines 7-13) co-operating with said bottom wall of said upper portion to define a second insulated chamber (46 – cool compartment; Figures 1-4); said lower portion having an externally accessible second closure member (38 – double pull zipper), said second closure member being operable to control access to said second chamber (as seen in Figures 1, 2); and

Jacobser ('314) does not expressly disclose:

- details related to a top wall that has a downwardly widening profile;
- details related to the movability of the rectangular bottom wall.

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As aforementioned, Jacober ('526) teaches that it is well known for soft-walled containers to be used to carry an assortment of items (see col. 1, lines 18-25). Jacober ('526) further discloses a soft-walled carrier, which is comprised of a top panel (18) that has a downwardly widening profile and extends between two side walls (as seen in Figures 1, 2, 4). It is also shown that each end wall has an upper edge conforming to the profile of the top panel and stands upwardly of one of the short sides of the apparatus' bottom panel (20) (as seen in Figures 1, 2). Further disclosed are handle straps (60) and/or shoulder straps (62) that may be attached to the carrier (see col. 5, lines 40-43; Figures 1, 2). In addition, as disclosed earlier, the interior (26 – body cavity) of the soft-walled carrier (10) is divided into upper and lower portions, via a shelf member (40). Access to the interior of the container can be gained upon unzipping the container's closure member (33 – zipper), which further allows for the shelf member to be detached (via snap fasteners [52]) and folded upon a users request (as seen in Figures 4, 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Jacober ('314) by incorporating a downwardly widening profile upon the apparatus' top panel, as taught by Jacober ('526), for aesthetic reasons, thus making the apparatus more appealing and marketable to consumers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Jacober ('314) by incorporating a rectangular panel that is movable within the apparatus, as taught by Jacober ('526), so that larger food items or a larger quantity of food items can be enclosed within, thus making the apparatus more user-compatible and -friendly.

Regarding claims 44 and 45, Jacober ('314) does not expressly disclose:

- details related to a mesh pocket member;
- details related to a thermal storage element.

Regarding claim 44, it would have been obvious for one of ordinary skill in the art at the time of the invention was made to modify the existing apparatus of Jacober ('314) as modified by Jacober ('526) by making the plastic strip (54) out of a mesh material so that users can see the contains enclosed within, thus allowing users to more readily locate stored items.

Regarding claim 45, it would have been obvious for one of ordinary skill in the art at the time of the invention was made to modify the existing apparatus of Jacober ('314) as modified by Jacober ('526) by incorporating a thermal storage element within the apparatus' refreezable ice pack storage compartment (58) so that enclosed food items can be maintained at cooler temperatures for longer periods of time, thus extending the quality of life of the food items.

Regarding claim 46, Jacober ('314) discloses a liner (62 – back liner) mounted within on of said chambers (see col. 4, lines 37-43; Figure 2).

Regarding claim 48, Jacober ('314) discloses said first closure member extends along said first margin of said top wall (as seen in Figures 1, 3).

Regarding claim 49, Jacober ('314) discloses said wall members of said lower portion include a bottom wall member, a front wall member, a rear wall member and first and second end wall members, and said wall members co-operate to define an open topped box (46 – cool compartment) (as seen in Figures 1, 2); said front wall member, rear wall member and end wall members each have an upper margin (as seen in Figures 1, 2); said rear margin of said roof of said upper portion is hingedly connected to said upper margin of said rear wall member of said lower portion (as seen in Figures 1-4); and said second closure member is mounted to said upper margin of said front wall member and to said first long side of said bottom wall of said upper portion, said second closure

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member being operable to secure said upper portion in a closed position relative to said front wall member (as seen in Figures 1-4);

Regarding claim 50, Jacober ('314) does not expressly disclose a suspension member and details related thereto.

As aforementioned, Jacober ('526) teaches of a contained that is comprised of handle and/or shoulder straps.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Jacober ('314) by incorporating handle and/or shoulder straps upon the apparatus' top panel, as taught by Jacober ('526), so that users can easily transport their food items while using their hands for other purposes, thus making the apparatus more user-compatible and -friendly.

Regarding claim 51, Jacober ('314) discloses said container has a center gravity (obvious), and a suspension member (33 – carrying handle) mounted thereto at a level above said center of gravity (as seen in Figure 4).

Regarding claim 52, Jacober ('314) discloses said container has a shoulder strap (33 – carrying handle) mounted thereto (as seen in Figure 1).

Regarding claim 53, Jacober ('314) discloses when said second closure member is in an open position, said upper portion of container is soft-sided insulated hingedly displaceable relative to said lower portion of said soft-sided insulated container (as seen in Figures 1, 3).

Regarding claim 54, Jacober ('314) discloses the recited limitations above in claim 51.

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Regarding claim 55, Jacober ('314) discloses the recited limitations above in claims 43 and 51.

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacober ('314) as modified by Jacober ('526), and further in view of Mogil (US 6,092,661).

Jacobser ('314) as modified by Jacober ('526) do not expressly disclose details related to a reflective surface.

Mogil teaches of an insulated pack that is comprised of a compartment that is suitable to hold refreshments at either a warmed or chilled temperature (see Abstract). Mogil further discloses that the lid (32) of the apparatus is comprised of a flexible reflective inner layer (52) (see col. 4, lines 12-21; Figure 7).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Jacober ('314) as modified by Jacober ('526) by incorporating a reflective surface within the apparatus, as taught by Mogil, for aesthetic reasons, thus making the apparatus appealing and marketable to consumers.

Response to Arguments

Applicant's arguments filed 11/6/06 have been fully considered but they are not persuasive.

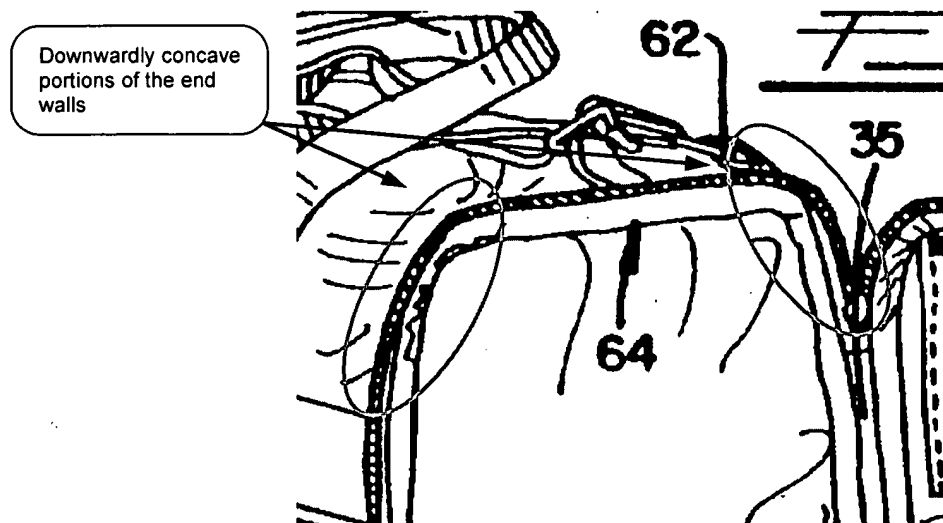
Applicant argues that the container of Hauk (US 4,796,758) is not soft-sided. This argument is persuasive however is overcome by the secondary reference of Jacober (US 5,090,526). As aforementioned, Jacober ('526) discloses of a soft-walled container that is comprised of a shelf member that divides the container into upper and lower portions. Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the existing apparatus of Hauk by incorporating soft-sided walls along the exterior of the apparatus, as taught by Jacober ('526), so to

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reduce the apparatus' overall weight and cost of manufacturing (see col. 1, lines 19-25), thus making the apparatus more user-friendly and increasing the overall profit from sales, respectively.

Applicant further argues that Jacober ('526) does not have an upper portion, or a panel, that is movable relative to the lower portion when the closure member of the lower portion is in the open condition. This argument is not persuasive. As aforementioned, Jacober ('526) discloses that upon unzipping the container's closure member (33 – zipper), users can gain access to the interior of the container wherein the shelf member can be detached (via snap fasteners [52]) and folded so to allow the container to be compressed for storage purposes or for the insertion of larger items (as seen in Figures 4, 5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Hauk by incorporating a rectangular panel that is movable within the apparatus, as taught by Jacober ('526), so that larger food items or a larger quantity of food items can be enclosed within, thus making the apparatus more user-compatible and -friendly.

Applicant further argues that the end wall of Jacober ('526) can not fairly be characterized as being "downwardly concave." This argument is not persuasive. As seen in the partial illustration of Figure 2 below, the end walls of Jacober ('526) are shaped in a downwardly concave (i.e., rounded inward) manner. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing apparatus of Hauk by incorporating end walls that have downwardly concave profiles, as taught by Jacober ('526), for aesthetic reasons, thus making the apparatus more appealing and marketable to consumers.



(Partial illustration of Figure 2)

Applicant further argues that there is nothing in the Office Action (i.e., Non-Final Rejection filed on 5/4/06) that provides any motivation, suggestion, or incentive to modify the references as proposed. Applicant further argues that the Office Action makes an impermissible hindsight analysis employing the Applicant's claims as a road map by which features are plucked from the secondary references to "fill in the blanks" of the recited features that are missing from the primary references. This argument is not persuasive. Each of the cited references are of analogous art, thus are capable of being combined. Furthermore, for each modification that this required, sufficient and relevant motivation has been provided. Thus, the rejections are valid and remain.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Early whose telephone number is (571) 272-3681. The examiner can normally be reached on Monday - Friday, 7am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJE
2/2/07

Michael J. Early
Patent Examiner
Art Unit 3744


CHERYL TYLER
SUPERVISORY PATENT EXAMINER

